

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 Case No. 16-cr-832

6 -vs-

7 NICHOLAS TARTAGLIONE,

8 Defendant.

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9
10 United States Courthouse
11 White Plains, New York
12 February 7, 2018
13 12:00 p.m.

14 Before:

15 HONORABLE KENNETH M. KARAS

16 District Judge

17 APPEARANCES

18 GEOFFREY S. BERMAN

19 Acting United States Attorney for the
20 Southern District of New York

21 MAURENE COMEY

22 Assistant United States Attorneys
23 Attorneys for the Plaintiff

24 BARKET, EPSTEIN & KEARON, LLP

25 BRUCE A. BARKET

AIDA LEISENRING

Attorneys for the Defendant, Nicholas Tartaglione

LAW OFFICE OF MARK S. DeMARCO

MARK S. DeMARCO

Attorney for the Defendant, Nicholas Tartaglione

A P P E A R A N C E S: (CONT.)

LAW OFFICE OF ANTHONY L. RICCO

ANTHONY L. RICCO

Attorneys for the Defendant, Nicholas Tartaglione

ALSO PRESENT:

NICHOLAS TARTAGLIONE

1 THE CLERK: All rise. The Honorable Kenneth M. Karas
2 presiding. United States of America versus Nicholas
3 Tartaglione, 16-cr-832.

4 Will counsel please state your appearances?

5 MS. COMEY: Good afternoon, Your Honor. Maurene Comey for
6 the government.

7 THE COURT: Good afternoon, Ms. Comey.

8 MR. BARKET: Good afternoon, Judge. Bruce Barket, Aida
9 Leisenring, Mark DeMarco and Anthony Ricco for Mr. Tartaglione.

10 THE COURT: Good afternoon to you all. Please be seated.

11 MR. RICCO: Good afternoon, Your Honor.

12 THE COURT: Sorry about the delayed production.

13 MR. RICCO: It's okay.

14 THE COURT: I'm not sure what happened, but sorry about
15 that. All right.

16 Status of things, Ms. Comey?

17 MS. COMEY: Your Honor, last week we made a discovery
18 production, which included the last of the lab reports. It
19 included as well some other financial documents and part of the
20 local police department's file, which we had not received until
21 recently.

22 Otherwise, there is one item that just came to my attention
23 that may need to be produced. We had previously obtained more
24 than a year ago a search warrant for phones that were seized
25 from Mr. Tartaglione on the day of his arrest. We were

1 technologically unable to execute those warrants because we did
2 not have the technology to get into them. I have been informed
3 by Quantico that they can now access those phones, so I
4 anticipate seeking a new warrant, and as soon as that's been
5 executed, we will of course turn over the reports that are
6 generated from those phones as soon as we get them.

7 Otherwise, to my knowledge, there is no other discovery to
8 produce.

9 THE COURT: Okay. Do you have any sense of how long that
10 process will take?

11 MS. COMEY: I expect we will be getting the warrant next
12 week, and then within 14 days of getting the warrant, they will
13 begin to execute it. I don't know how long the technology takes
14 in order to complete the execution and the report, Your Honor,
15 but it shouldn't be more than a month from today, I would think.

16 THE COURT: Okay. And where are we with the bureaucrats?

17 MS. COMEY: Still no word, Your Honor.

18 THE COURT: Okay. Is there any word on when you are going
19 to get word?

20 MS. COMEY: No, Your Honor. I am sorry.

21 THE COURT: Okay. When was the last time you talked to
22 them?

23 MS. COMEY: I have not had an update since our last
24 conference.

25 THE COURT: Okay.

1 Mr. Barket?

2 MR. BARKET: Good afternoon again, Judge.

3 THE COURT: Good afternoon.

4 MR. BARKET: The -- I am going to ask for a little bit
5 longer this time.

6 THE COURT: Okay.

7 MR. BARKET: One of the things that happens with the long
8 delay between our submission and our mitigation and their
9 decision is that there is a -- it runs the risk that our
10 mitigation -- I don't know if it becomes stale is the right
11 word but --

12 THE COURT: Maybe a little outdated.

13 MR. BARKET: Maybe a little outdated; may need some -- may
14 need some supplementing.

15 THE COURT: Sure.

16 MR. BARKET: So it may be worth a little extra time to do
17 that and perhaps another conversation with the government about
18 their theories of the case and to make sure that we are at least
19 meeting them where they are as opposed to where they were back
20 in August.

21 THE COURT: Sure. Okay. So what do you have in mind?

22 MR. BARKET: I think 60 days, a little longer than we
23 usually go.

24 THE COURT: Okay.

25 MR. BARKET: But I think that makes sense. Can I just have

1 one second?

2 THE COURT: Sure. Of course.

3 MR. BARKET: So 60 days makes sense.

4 THE COURT: Okay. Are you okay with that, Ms. Comey?

5 MS. COMEY: That's fine, Your Honor.

6 THE COURT: Good. So let's say then April. Tuesday,
7 April 10th at 3:00?

8 MR. BARKET: Can we have not a Tuesday? That's
9 Mr. Tartaglione's visiting day --

10 THE COURT: Oh.

11 MR. BARKET: -- at his current location.

12 THE COURT: Okay.

13 MR. BARKET: It's always subject to change, but right now
14 it's Tuesday.

15 THE COURT: How about Monday, April 9th at 11:00?

16 MR. BARKET: That is -- that's fine.

17 THE COURT: Is that fine?

18 MR. BARKET: Can I bring up one small thing I mentioned to
19 the government?

20 THE COURT: I want to -- Ms. Comey, you okay with that?

21 MS. COMEY: Yes, Your Honor. Thank you.

22 THE COURT: Yes, go ahead.

23 MR. BARKET: Nick was moved from MDC to MCC.

24 THE COURT: Okay.

25 MR. BARKET: And the housing facility where he is now is,

1 you know, relatively speaking, fine, but --

2 THE COURT: Which I think was part of the problem as to his
3 delayed production today.

4 MR. BARKET: Oh, they didn't know he had moved?

5 THE COURT: Yes. I think that nobody bothered to tell the
6 marshals.

7 MR. BARKET: Things happen.

8 THE COURT: Yes.

9 MR. BARKET: But he has not yet had his personal items
10 catch up to him, and it's been at least a couple of weeks. Part
11 of that is the discovery. So we want to be able to make sure
12 that happens.

13 THE COURT: Okay. Can you check on it?

14 MR. BARKET: I will call over to the jail, the facility,
15 whatever it's called. I am just hoping the government can maybe
16 do the same, and that might expedite the delivery of his books,
17 some photographs, but I guess for the case most important is the
18 discovery.

19 THE COURT: Well, he should have his stuff. So you can
20 just make a phone call.

21 MS. COMEY: Certainly, Your Honor. I can call Adam
22 Johnson.

23 THE COURT: You never know with the government. Maybe it
24 got sent from MDC to MCC by way of Spokane, you know, just
25 because.

1 MR. BARKET: I mean, and Mr. Johnson has been great. I
2 spoke to him when the transfer first happened about the housing
3 because the housing there before was -- was not ideal.

4 THE COURT: Yes.

5 MR. BARKET: And he has been great, but it just hasn't
6 caught up yet. So I will call him, and then they can call him.

7 THE COURT: Okay. So if there is any -- if there is
8 anything you all need from me, just let me know, but I am going
9 to assume it's going to get fixed.

10 Okay. Any objection to excluding time from now until
11 April 9th?

12 MR. BARKET: No.

13 THE COURT: Okay. Then I will prospectively exclude time
14 from now until April 9th. I find it in the interests of justice
15 to do so. Mr. Barket has explained the benefits to having our
16 next conference be a little further out than normal in terms of,
17 as he says, making sure that his team can sort of figure out
18 where the government is and also make sure that the submission
19 to the justice department doesn't become outdated.

20 In addition, it sounds like there is some new discovery
21 material that Ms. Comey is going to expeditiously try to get
22 produced to the defense team, and so for all of those reasons I
23 find it in the interests of justice that this exclusion
24 outweighs Mr. Tartaglione's and the public's interest in a
25 speedy trial; the finding is made pursuant to 18 U.S.C. Section

1 3161(h)(7)(A) .

2 Anything else, Ms. Comey?

3 MS. COMEY: No. Thank you, Your Honor.

4 THE COURT: Mr. Barket, anything else?

5 MR. BARKET: No.

6 THE COURT: Marshals, thank you for getting Mr. Tartaglione
7 here. We are adjourned.

8 (Time noted: 12:19 p.m.)